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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 33

ANTHONY CASTALDI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Constitutional Provisions, Statutes and Rule Involved	2
STATEMENT OF THE CASE:	
The Nature of the Proceedings	3
The Record	4
Prior Proceedings	4
The Contempt Proceedings	5
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	14
APPENDIX A—Opinion of United States Court of Appeals	15
APPENDIX B—Constitutional Provisions, Statutes and Rule Involved	21
Federal Rules of Criminal Procedure	23
APPENDIX C—Indictment	25

AUTHORITIES CITED

Cases

Cinquegrano v. United States, No. 541, O.T. 1964	5
District of Columbia v. Clawans, 300 U.S. 617	11
Ex Parte Wilson, 114 U.S. 417	10
Harris v. United States, No. 526, O.T. 1964	12

PAGE

Mogavero v. United States, No. 546, O.T. 1964 5

Piemonte v. United States, 367 U.S. 556 8

Reina v. United States, 364 U.S. 507 8
Rollerson v. United States, 33 USLW 2173 ..... 13, 14

Sealfon v. United States, 332 U.S. 575 9

United States v. Barnett, 376 U.S. 681, fn. 12 ....11, 12, 13
United States v. Borelli, 336 F. 2d 376 .....4, 5, 6, 8
United States v. Kramer, 289 F. 2d 909 9
United States v. Sabella, 272 F. 2d 206 9

Wong Wing v. United States, 163 U.S. 228 10

Zdanok v. Glidden Company Durkee Famous Foods Division, 327 F. 2d 944 9

Statutes

18 U.S.C. §1 11
18 U.S.C. §1(1) 10
18 U.S.C. §401 11
28 U.S.C. §1254(1) 1
18 U.S.C. §1406 .....2, 3, 5, *passim*

Rules

Federal Rules of Criminal Procedure:
Rule 42(a) 6, 13
Rule 42(b) 3, 6, 13

United States Constitution

Fifth Amendment 10

Sixth Amendment 10

Miscellaneous

Developments in the Law, Res Judicata, 65 Harvard Law Review, 818 (1952) 9

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Supreme Court of the United States

October Term, 1964

No.

ANTHONY CASTALDI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner Anthony Castaldi prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on November 17, 1964.

Opinion Below

The opinion of the Court of Appeals in this case has not yet been reported. It is set forth as Appendix A, hereto, *infra.*

Jurisdiction

The judgment of the Court of Appeals was entered on November 17, 1964. The jurisdiction of this Court is invoked under Title 28, United States Code, § 1254(1).

Questions Presented

1. Whether it was constitutionally proper under the factual circumstances of this case to prosecute and convict petitioner for criminal contempt of court for his refusal to answer questions before a grand jury as to matters about which he had previously been acquitted, by purporting to grant him immunity under the provisions of Title 18, United States Code, § 1406.

2. Whether petitioner was constitutionally entitled to an indictment and to a trial by jury for the crime of criminal contempt of court, which, by virtue of the sentence of two years imprisonment imposed against him, constituted a felony.

3. Whether the sentence of two years imprisonment imposed against petitioner in this case is in violation of his constitutional rights.

Constitutional Provisions, Statutes and Rule Involved

The pertinent constitutional provisions, statutes and rule involved in this case are set forth in Appendix B, *infra*.

STATEMENT OF THE CASE

The Nature of the Proceedings

Petitioner Anthony Castaldi was convicted of criminal contempt of court and sentenced to two year's imprisonment, subject to a limited purge clause, under Rule 42(b), Federal Rules of Criminal Procedure, for his refusal to answer questions before a federal grand jury. On July 2, 1964, an order to show cause was issued by District Judge Inzer B. Wyatt, ordering petitioner to appear before him on July 8, 1964, to show cause why he should not be punished for contempt for having refused to answer questions before a grand jury as he had been directed theretofore to do by District Judge Wilfred Feinberg on May 15, 1964, and as he had also been directed to answer by Judge Wyatt on July 2, 1964.

At the proceedings before Judge Feinberg on May 14 and 15, 1964, the government applied to grant immunity to petitioner under the provisions of Title 18, United States Code, § 1406. Following compliance with the procedural requirements of this statute, immunity purportedly was granted to petitioner.

On July 8, 1964, petitioner and his counsel appeared before Judge Wyatt. Petitioner there filed with the court a written answer to the charges, in the form of an affidavit of his counsel, containing a demand for a trial by jury of the contempt charge. However, this demand for a jury trial was refused and the contempt hearing proceeded before the court alone. On July 9, 1964, petitioner was convicted of contempt of court and sentenced to two years imprisonment, subject to a purge clause if petitioner appeared and testified before the grand jury before its term expired.